

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
1998 Biennial Regulatory Review -- Streamlined)	CC Docket No. 98-171
Contributor Reporting Requirements Associated)	
With Administration of Telecommunications)	
Relay Service, North American Numbering Plan,)	
Local Number Portability, and Universal Service)	
Support Mechanisms)	
)	
Telecommunications Services for Individuals with)	CC Docket No. 90-571
Hearing and Speech Disabilities, and the)	
Americans with Disabilities Act of 1990)	
)	
Administration of the North American Numbering)	CC Docket No. 92-237
Plan and North American Numbering Plan Cost)	NSD File No. L-00-72
Recovery Contribution Factor and Fund Size)	
)	
Number Resource Optimization)	CC Docket No. 99-200
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
Truth-in-Billing and Billing Format)	CC Docket 98-170

**COMMENTS OF THE
AD HOC TELECOMMUNICATIONS USERS COMMITTEE**

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**COMMENTS OF THE
AD HOC TELECOMMUNICATIONS USERS COMMITTEE**

The Ad Hoc Telecommunications Users Committee (“Ad Hoc” or “the Committee”) hereby submits its comments in response to the Commission’s February 26, 2002 *Further Notice of Proposed Rulemaking* (“*Further Notice*”) in the above-captioned proceedings.¹

¹ *Federal-State Joint Board on Universal Service*, FCC 02-43, 67 Fed. Reg. 11268 (March 13, 2002) (“*Further Notice*”). By *Order*, DA 02-783 (rel. April 8, 2002), the Commission has extended the comment deadline in this proceeding until April 22, 2002.

I. Introduction and Summary

In this proceeding, the Commission seeks comment on a plan developed by the Coalition for Sustainable Universal Service (hereinafter the "Coalition") that would require carriers to recover their universal service contributions on a per-connection basis rather than on the basis of end-user revenues from interstate telecommunications services.² Under the Coalition Plan, telecommunications carriers would be initially assessed \$1.00 for each residential and single-line business network connection, and for each wireless activated handset. Providers of paging service would initially be charged \$0.25 per activated pager. Providers of multi-line business connections would initially be required to remit a capacity-based charge that would fund the residual amount required to meet the universal service fund's payment obligations. The Commission further seeks comment on whether carriers should be permitted to mark-up their FCC-mandated contributions to the fund in order to recover amounts putatively related to bad debt and the carriers' administrative overhead.

Ad Hoc supports the imposition of a connection-based assessment and collection methodology because the current, interstate telecommunications revenue-based collection scheme is on the verge of collapse, and a connection-based regime is more equitable, efficient, and sustainable. As long distance

² The members of the Coalition are: The Ad Hoc Telecommunications Users Committee, AT&T Corp., eCommerce & Telecommunications Users Group (e-TUG), Level Three Communications, LLC and WorldCom, Inc. Ad Hoc supports the Coalition's comments filed on this date in this matter. As evidenced by these comments, Ad Hoc must anticipate, because of questions raised in the *Further Notice*, that the Commission's decisions on such questions may be adverse to Ad Hoc's interest. Accordingly, Ad Hoc submits these comments to address matters on which all members of the USF Coalition may not agree in the future or at present.

revenues decline, the distinctions between inter- and intrastate revenues and telecommunications and non-telecommunications revenues become increasingly difficult to discern, and the size of the universal service fund seems to inexorably increase, the well from which the universal service program is currently funded has begun to run dry.

A connection-based surcharge, on the other hand, is more sustainable because it does not require carriers to differentiate among different types of revenues, and the number of connections to the network has historically been more constant than revenues. Further, a connection-based assessment and collection regime is more economically efficient because it does not encourage bypass by discriminating among services or technologies, and avoids deadweight loss by not recovering non-traffic sensitive costs through a traffic-sensitive rate element.

While Ad Hoc can reluctantly accept initializing the contribution obligations for multi-line business connections by using a residual approach, it would be legally indefensible to freeze the per-connection assessments for residential, wireless, and single-line business customers, and require multi-line business customers to bankroll all future increases in the size of the universal service fund. First, there is no record evidence that residential customers cannot afford the slight increases in per-connection charges that may be necessary to fund future expansions of the universal service programs. Therefore, it would be arbitrary and capricious for the Commission to use affordability as the basis for freezing residential, wireless, and single-line business universal service assessments and

contributions, while allowing unlimited increases in multi-line business assessments and contributions. Second, because residential customers can afford to pay for an equitable share of future increases in the universal service fund, it would be unjust, unreasonable, and unreasonably discriminatory—and therefore violative of Sections 201(b), 202(a), and 254(b)—to establish a rate structure under which multi-line business customers pay for all future increases in the size of the fund. Third, because residential customers can afford modest increases in their per-connection fees, a Commission decision to freeze these assessments would not be rationally related to maintaining affordable residential service. As such, any increases in the assessments levied on multi-line business connections to subsidize residential customers would effectively unjustly discriminate against multi-line business users, in violation of the Equal Protection Clause.

Finally, whether universal service contributions are assessed on a per-connection basis or on the basis of interstate revenues, carriers should not be permitted to mark-up the Commission prescribed contribution assessments by charging customers for costs related to uncollectibles and administrative overhead. Because such carrier expenses are not directly related to a carrier's universal service funding obligations, describing them as such is inaccurate and/or misleading, and therefore violates the standards set forth in the Truth-in-Billing rules and universal service orders.

II. Ad Hoc Agrees With the Commission and the Coalition that the Current Revenue-Based System Is Unsustainable and that a Connection/Capacity-Based Approach Should Be Implemented

In its *Further Notice*, the Commission notes a number of potentially fatal flaws in the current approach to assessing and collecting universal service contributions based on interstate carriers' end-user revenues from interstate and international telecommunications services.³ Similarly, the Coalition's comments in this proceeding demonstrate the unsustainability of revenue-based contributions. As described in greater detail in its earlier filed pleadings in response to the *Notice of Proposed Rulemaking* in this proceeding,⁴ Ad Hoc joins the FCC and the Coalition in these critiques.

Specifically, reliance on interexchange carriers for a lion's share of the funding (63 percent, according to the Commission's statistics)⁵ is becoming increasingly untenable because due to increased interexchange competition and the use of substitute services, long distance providers have reported declining revenues for the past few years.⁶ Further, as carriers begin offering bundles of inter- and intrastate services, and bundles of telecommunications and non-telecommunications services, it has become more and more difficult to isolate and assess contributions against end-user revenues from interstate telecommunications services.⁷ Taken together, these factors have resulted in a

³ *Further Notice*, ¶ 86.

⁴ See Ad Hoc Comments (filed June 25, 2001) and Ad Hoc Reply Comments (filed July 9, 2001), *Federal-State Joint Board on Universal Service*, FCC 01-145, 66 Fed. Reg. 28718 (2001).

⁵ *Further Notice*, ¶ 59.

⁶ *Further Notice*, ¶ 86; See Coalition Comments at 18-23.

⁷ *Id.*; See Coalition Comments at 23-28.

declining revenue base from which to fund universal service. As the contribution base declines, the contribution factor will have to increase in order to ensure the same level of funding for universal service, to say nothing of the increased level of funding that seems inevitable under the *MAG Order*, the *RTF Order*, and the proposed elimination of the caps on the high cost fund.⁸ Under the current revenue-based assessment and collection methodology, this shrinking contribution base and growing funding requirements can have only one result—the “death spiral” of the universal service fund.⁹

A connection-based collection methodology will ameliorate a number of these problems. In particular, a connection-based approach will not require carriers to separate telecommunications revenues from non-telecommunications revenues and interstate revenues from intrastate revenues.¹⁰ Further, because the number of connections to the network has historically been more stable than end-user revenues from interstate telecommunications services, a connection-based funding mechanism will be more constant than a revenue-based system.¹¹ In addition, a connections-based approach is competitively and technology neutral, because all providers, regardless of the type of services offered or the

⁸ See Coalition Comments at 18-23 (citing *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, 16 FCC Rcd 19613 (2001) (“MAG Order”); *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, 16 FCC Rcd 11244 (2001) (“RTF Order”); S. 500, Universal Service Support Act, introduced Mar. 8, 2001, by Sen. Conrad Burns; H.R. 1171, Universal Service Support Act, introduced Mar. 22, 2001, by Rep. Nathan Deal).

⁹ See Ad Hoc Comments (filed June 25, 2002) at 19-26; Coalition Comments at 18 (noting that the contribution factor could reach 13 percent by 2006).

¹⁰ *Further Notice*, ¶ 71.

¹¹ *Id.*, ¶ 71.

technology deployed, make the same per-connection contribution to the fund.

As such, there will be no incentive for customers to switch services or technologies solely to avoid universal service fees. Thus, a per-connection charge is equitable, non-discriminatory, and prevents inefficient market distortions.¹²

As noted in Ad Hoc's earlier comments in this proceeding, and un rebutted by any other party, a per-connection methodology also avoids the deadweight economic loss associated with recovering non-traffic sensitive costs (those associated with the local loop) on a traffic-sensitive basis.¹³ Finally, only one carrier will be required to contribute to the fund based on an end-user's connection to the public switched network, rather than the numerous carriers that are required to contribute based on each point of connection under a revenue-based system. Therefore, a connection-based collection methodology is simpler, more efficient, and more understandable by end-users.¹⁴

Thus, Ad Hoc endorses the Coalition's comments in this proceeding as they relate to the serious defects in the current revenue-based system and the advantages of switching to a connection/capacity-based approach to funding the universal service program. The Commission should seize this opportunity to reform the revenue-based universal service contribution system and replace it with a per-connection regime before the current system collapses under its own weight.

¹² See Coalition Comments at 42-45.

¹³ See Ad Hoc Comments (filed June 25, 2001) at 7-10; Coalition Comments at 45-47.

¹⁴ *Further Notice*, ¶ 72; Coalition Comments at 47-48.

III. Requiring Multi-line Business Customers to Finance All Future Increases in the Fund Would Be Unjust, Unreasonably Discriminatory, and Legally Indefensible

A. After Initialization in Accordance With the Coalition's Proposal, the Per Connection Charge for Each Class of Customer Should Rise or Fall in Proportion to the Number of Connections to the Network and Size of the Fund

Ad Hoc reluctantly accepts the Coalition Proposal's "residual approach" as an acceptable means of initializing the contribution requirements of each class of contributor. This tepid support is, however, conditional on the Proposal being accepted by the FCC without material change or deviation. As noted by the Commission, based on an initial charge of \$1.00 per residential line and \$1.00 per activated wireless handset, the average household will not contribute any more under the Coalition Proposal than under the old contribution methodology.¹⁵

After this initialization, Ad Hoc agrees with the Coalition that the assessments for each class of connection (residential, wireless, single-line business, multi-line business) must increase or decrease in indirect proportion to the number of connections to the network and in direct proportion to the monetary requirements of the universal service fund. As noted by the Coalition, unless all classes of users share equally in supporting any increased funding requirements, "business users could become subject to exorbitant universal service recovery fees."¹⁶

¹⁵ *Id.*, ¶ 46.

¹⁶ Coalition Comments at 64.

In the *Further Notice*, the Commission notes that if the funding requirements increase by 10 percent, and the number of connections remains the same, one way of accounting for this growth would be to increase the per connection charge for each class of contributors by 10 percent. Similarly, if the total number of connections increases by 10 percent, and the funding requirements remain the same, each class of contributor could see their per connection charge decrease by 10 percent.¹⁷ Ad Hoc believes that such proportional increases or decreases in the contribution obligation of each class of contributor are the *only* reasonable and non-discriminatory means of accounting for changes in the fund size and the number of contributors, and, as such, endorses them.

The Commission nevertheless seeks comment on “whether the proposed flat assessment rates on residential, single-line business, and mobile wireless connections should be adjusted periodically for increases or decreases in connections and/or funding requirements.”¹⁸ This question implies that the FCC is contemplating freezing the per-connection contribution requirements of residential, wireless and single-line business customers, and making multi-line business customers solely responsible for the inevitable increased funding requirements of the universal service fund. As described below, any attempt by the Commission to make business customers responsible for such future

¹⁷ *Further Notice*, ¶ 75.

¹⁸ *Id.*, ¶ 74.

increases in order to favor residential and wireless subscribers would be legally indefensible.

B. It Would Be Legally Indefensible for the Commission to Use Affordability as a Basis for Requiring Multi-Line Business Customers to Underwrite All Future Increases in the Fund

Using “affordability” as a rationale for freezing the residential, wireless, and single-line business assessments, while allowing multi-line business assessments to increase without limit is *ultra vires* for three reasons. First, the refusal to allow slight increases in residential rates based on affordability concerns represents “arbitrary and capricious” agency action, in violation of the Administrative Procedure Act. Second, requiring multi-line business users to fund all future increases in the universal service fund violates the “just, reasonable, and affordable” requirements of Section 254(b)(1) and the prohibitions on unjust and unreasonable rates and “unreasonable discrimination” embodied in Sections 201(b) and 202(a) of the Communications Act. Third, freezing residential contributions to the universal service fund does not rationally further the Commission’s interest in maintaining affordable residential service and, as such, violates the Equal Protection Clause.

1. Requiring Multi-line Business Customers to Fund All Future USF Increases Would Be Arbitrary and Capricious

Under the arbitrary and capricious standard of the Administrative Procedure Act: “If the agency has failed to provide a reasoned explanation for its action or if limitations in the administrative record make it impossible to conclude the action was the product of reasoned decision-making, the reviewing court may supplement the record or remand the case to the agency for further proceedings.

It may not simply affirm.”¹⁹ The FCC can provide neither a reasoned explanation for, nor point to record evidence that, future increases in non-multi-line business per connection charges will lead to a decrease in telephone subscribership penetration levels. In fact, the theoretical and empirical economic evidence indicate that demand for local service is relatively inelastic and that “a small increase in the local rate would not be a large burden for poor consumers.”²⁰

Economic theory indicates that because of the inelasticity of demand for local service, requiring residential consumers to pay an equitable portion of any increases in the universal service fund will have virtually no impact on telephone subscribership. According to a study by Hausman *et al.*, “The elasticity of local phone service demand with respect to the basic access price [is approximately] —0.005.”²¹ Thus, “a 10 percent price increase leads to only a 0.5 percent decrease in consumption of local service.”²² Put another way, “a 10 percent rate increase [for local service] would mean a drop in telephone penetration from the current level of 95.1 percent to 94.6 percent.”²³ Because any increase in the price of local service due to residential customers paying an equitable portion of increases in universal service funding would be considerably less than 10

¹⁹ *Qwest v. FCC*, 258 F.3d 1191, 1198-99 (10th Cir. 2001) (citing 5 U.S.C. § 706(2)(A)).

²⁰ Jerry Hausman and Howard Shelanski, *Economic Welfare and Telecommunications Regulation: The E-Rate Policy for Telecommunications Subsidies*, 16 Yale J. on Reg. 19, *49 (1999).

²¹ *Id.* at *38 n.85 (citing Jerry Hausman, *et al.*, *The Effects of the Breakup of AT&T on Telephone Penetration in the United States*, 83 Am. Econ. Rev. 178 (1993)).

²² *Id.* at *39.

²³ *Telephone Subscribership in the United States*, FCC Industry Analysis Division, (rel. Feb. 7, 2002) at 1, http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/subs0701.pdf, Accessed April 17, 2002. (“Telephone Subscribership”).

percent, the corresponding drop in subscribership would be much less than 0.5 percent.

Examination of the available empirical evidence conclusively demonstrates that the kinds of local service per line increases being contemplated at this time will not push local service out of the affordability range. Specifically, in surveys of households without phone service in Texas²⁴ and New Jersey,²⁵ a large majority of the respondents stated that they could afford basic local rates and were able to correctly identify the general magnitude of these rates. These studies further indicated that many households either discontinued service, or were disconnected from the network because of unpaid long-distance charges or high re-activation fees.

Recent experience following the implementation of the first step in the FCC's phased increase in residential SLCs that occurred under the CALLs Plan in July 2000 is also compelling. Rather than observing an increase in the number of households without phone service as a result of the per line increase during the first annual period following this SLC increase, according to the FCC's own data, there was a *decrease* in the number of households without phone service.²⁶ In fact, the period July 1, 2000 to July 1, 2001 witnessed the single largest annual decrease in the number of households without telephones during

²⁴ *Id.* at *49 n.103 (citing *Policy Research Project on the Evolution of Universal Telecomms. Serv. in Tex., The Evolution of Universal Service in Texas* 16-17 (Lyndon B. Johnson Sch. of Pub. Affairs Policy Research Project Report No. 116)).

²⁵ *Id.* at *49 n.103 (citing Milton Mueller & Jorge Reina Schement, *Universal Service From the Bottom Up: A Study of Telephone Penetration in Camden, New Jersey*, 12 Info. Soc'y 273, 274 (1996)).

²⁶ *Telephone Subscribership*, Table 1.

the entire 18-year period tracked in the current FCC report. While the number of households in the United States increased by 1.1 million during this time period, the number of households with telephones increased by 1.9 million.²⁷ Even more compelling, *the number of households without telephones shrunk by almost 12 percent* during that same period.²⁸ Clearly, the imposition of a higher per line charge did not make local phone service “unaffordable.”²⁹ The increase in the percentage of households with telephones during this period occurred throughout the vast majority of income and racial categories—including households with incomes under \$5,000 per year.³⁰

Empirical evidence also exists that the purchase of *local* telephone service has been accounting for a steadily decreasing percentage of annual median income in the United States.³¹ As the tables and figures on the following pages demonstrate, the “average” American household spent only 0.59 percent of its annual income on local telephony in 2000, down from 0.85 percent in 1986.³²

²⁷ During the time from July 2000 to July 2001, the number of households in the United States increased from 105.8 million to 106.9 million and the number of households with telephone service increased from 99.8 million to 101.7 million. *Telephone Subscribership*, Table 1.

²⁸ Households without telephone service went from 5.9 million in July 2000 to 5.2 million in July 2001. Percentage decrease over this time period is calculated as follows: $[(5.2 - 5.9) / 5.9] * 100$, which represents a decrease of approximately 12 percent. *Telephone Subscribership*, Table 1.

²⁹ In fact, the same data source demonstrates that from the end of 1983 (prior to the introduction of any SLCs) through the July 2001 reporting period, the number of households in the United States increased by 25 percent, while the number of households without telephones shrunk by 30 percent. This is clear evidence that the transition from usage sensitive charges to per line charges has not had a negative impact upon the affordability of local service.

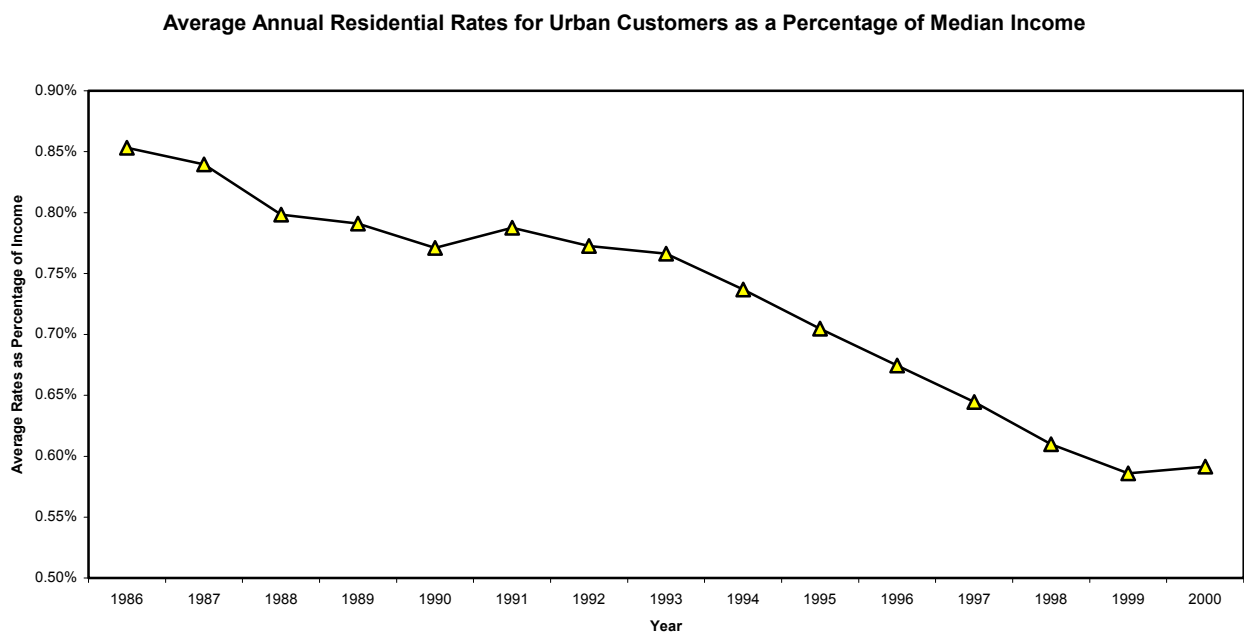
³⁰ *Telephone Subscribership*, Table 4 at 27–28.

³¹ *Total* expenditures on telecommunications services during this time (including intra and interstate toll, calling features, etc.) have been increasing.

³² Calculations were performed by taking the Average Residential Rates for Local Service in Urban Areas as a percentage of Median Income in Current Dollars; results were extrapolated to represent the “average” American household. See Table 1 for data sources.

Extrapolating that data to today, the average residential local service bill would need to sustain an increase of \$6.50 in per line charges *per month* (beyond the presently effective \$5.00 SLC) before it would account for a greater percentage of average annual household expenditures than local service did fifteen years ago.

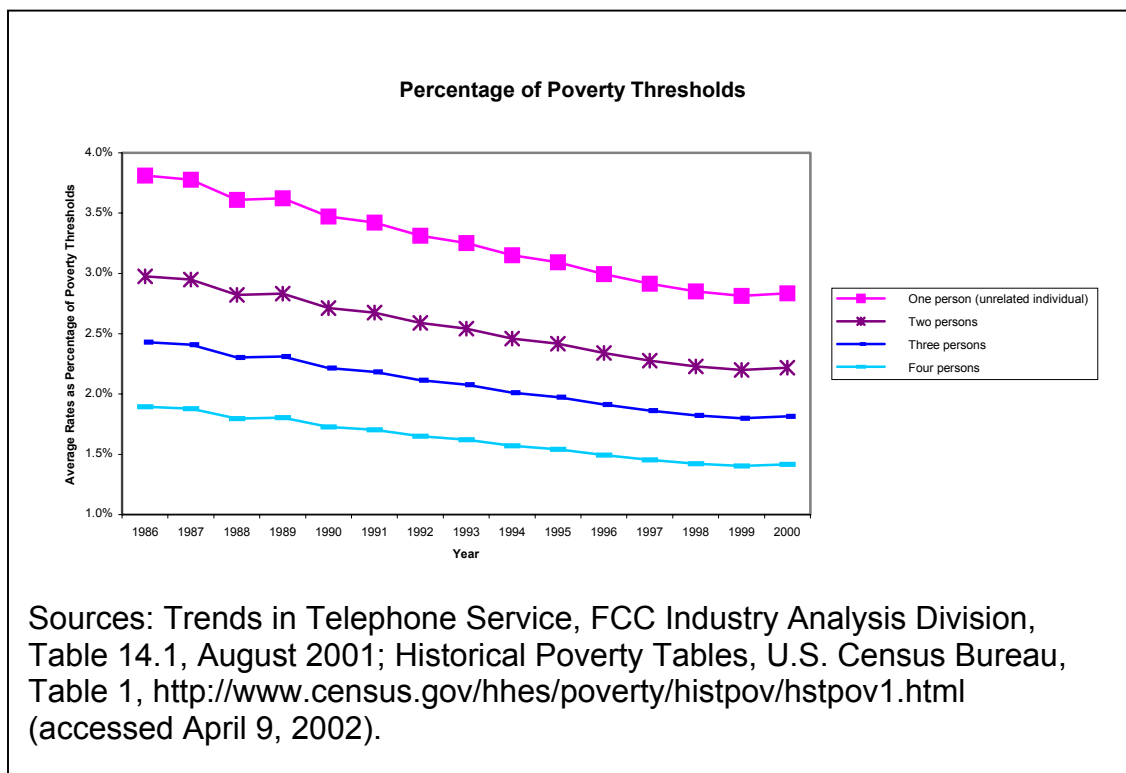
Table 1.



Sources: *Trends in Telephone Service*, FCC Industry Analysis division, Table 3.1, August 2001; *Historical Income Tables – Households*, U.S. Census Bureau, Table H-8, <http://www.census.gov/hhes/income/histinc/h08.html> (accessed April 9, 2002).

The same relationship holds true when local service expenditures are viewed as a percentage of the poverty threshold (*i.e.*, the percent of its annual income that a family living on the poverty line would spend on local telephony). Specifically, in 1986, annual local service expenditures accounted for 1.9 percent of the U.S. Poverty Threshold for families of four or more, but by 2000, that percentage had dropped to 1.5 percent.

Table 2.



Finally, the Coalition proposal exempts low income residential customers (*i.e.*, customers that qualify for the Lifeline program) from making any contribution to the universal service fund.³³ Because low-income customers are so protected, whatever minimal impact a connection-based surcharge might have on telephone subscribership will be further mitigated. As noted by the Commission and the Coalition, the combination of a per-line charge and a Lifeline exemption is more solicitous of the needs of low-income customers than a revenue-based charge on interstate services. Specifically, under the current recovery scheme, unless the interexchange carrier has a Lifeline waiver *and* the customer has notified the interexchange carrier that he or she is a Lifeline customer, interexchange carriers do not exempt low-income customers from paying universal service fees.³⁴

The record evidence thus indicates that residential subscribers can afford the modest increases in their per connection charge that might be necessary to fund their fair share of increases in the Universal Service Fund. Therefore, it would be arbitrary and capricious for the Commission to use affordability concerns as a basis for a decision to freeze USF assessments on residential connections.

³³ *Further Notice*, ¶ 49. See also Coalition Comments at 70 ("Under the Coalition proposal, Lifeline consumers never pay a universal service recovery charge for any service received over their Lifeline connection.")

³⁴ *Id.*, ¶ 49; Coalition Comments at 70.

2. Requiring Multi-line Business Customers to Fund All Future Increases Would Be Unjust, Unreasonable, and Unreasonably Discriminatory

Not only would it be arbitrary and capricious to freeze the amount contributed to the Universal Service Fund by residential subscribers, but it would be unjust and unreasonably discriminatory to require multi-line business subscribers to fund all future increases in the Universal Service Fund. In *Texas Office of Public Utility Counsel v. FCC*,³⁵ the Fifth Circuit held that the obligation to ensure just, reasonable, and non-discriminatory rates applied to FCC-mandated access charges (*i.e.*, the SLC) as well as end-user rates and charges imposed by common carriers. There is no reason why Sections 201(a) and 202(b) should not similarly apply to the rate structure that results from a Commission-mandated Universal Service Fund cost recovery scheme. In fact, the Section 254, which established the current universal service program, specifically mandates that the rate structure established by the program must be “just, reasonable, and affordable.”³⁶

As the size of the universal service program grows, the discrimination against business users would be more and more obvious. There is no reasoned justification for such discrimination, especially given the fact that, as noted above, there is no record evidence that residential customers cannot afford to pay a just and reasonable share of any increased funding requirements. Moreover, in

³⁵ 265 F.3d 313, 425 (5th Cir. 2001) (“§§ 201(b) and 202(a)’s broader standard that interstate service rates be ‘just and reasonable’ without ‘unreasonable discrimination’ applies here [to access charges]”).

³⁶ 47 U.S.C. §§ 254(b)(1).

addition to such assessments and the resulting contributions being unlawfully discriminatory, they also would be unjust and unreasonable.

3. Requiring Multi-line Business Customers to Fund All Future Increases Would Violate the Equal Protection Clause

In addition to being indefensible under the Communications Act, requiring multi-line business users to fund all increases in the universal service fund is unjustifiable under the Equal Protection Clause.³⁷ An economic classification such as the one at bar (*i.e.*, distinguishing between residential and multi-line business subscribers) is Constitutional only “if the distinction it makes rationally furthers a legitimate state purpose.”³⁸

Even under this lenient standard of review, requiring multi-line business subscribers to fund all future increases in the universal service fund would not survive judicial scrutiny. In particular, the record in this proceeding demonstrates no reason why residential customers cannot afford to pay for an equitable portion of future increases in the universal service fund through modest increases in their per connection charges. Therefore, distinguishing between multi-line business customers and residential customers for the purpose of assessing future universal service contributions does not rationally further the Commission’s putative goal of maintaining affordable residential telephone service.

³⁷ Although the Equal Protection Clause, by its terms, applies only to the states, in *Bolling v. Sharpe*, 347 U.S. 497 (1954), the Supreme Court used the Fifth Amendment’s due process guarantees to apply equal protection principles to actions by the federal government.

³⁸ *Zobel v. Williams*, 457 U.S. 55, 60 (1982) (An Alaskan statute distributing oil revenues to state citizens in varying amounts, based on how long the person has been a state citizen does not rationally further a legitimate state purpose.)

IV. Carriers Should Not Be Permitted to Mark-Up the FCC-Mandated Contribution Factor

The Commission seeks comment on the degree of flexibility carriers should be given in recovering universal service surcharges from their customers in general, and, in particular, whether carriers should be permitted to charge their customers more than the Commission-prescribed universal service charge, thereby “marking up” this charge.³⁹ As described in its earlier pleadings in this proceeding, the Commission should not permit carriers to mark-up their universal service contributions on their customer bills.⁴⁰ It is only through such regulatory vigilance that carriers will be prevented from turning a program that was designed to assist customers in high-cost areas, the nation’s secondary schools, and rural medical providers into a profit center for carriers.

Regardless of whether universal service contributions are recovered on the basis of end-user revenues or connections to the network, Ad Hoc agrees with the FCC’s suggestion that carriers should be prohibited from “marking up their line items above the relevant contribution amount to recover administrative costs, uncollectibles, or other contribution-based costs.”⁴¹ In its earlier pleadings, Ad Hoc noted that the manner in which carrier’s can collect universal service contributions from their customers is governed by the “just and reasonable” requirements of Section 201(b) of the Communications Act, and the

³⁹ *Further Notice*, ¶¶ 89, 100.

⁴⁰ Ad Hoc Comments (filed June 25, 2001) at 35-36; Ad Hoc Reply Comments (filed July 9, 2001) at 20-24.

⁴¹ *Further Notice*, ¶ 100.

Commission's Truth-in-Billing rules and Universal Service orders.⁴² In particular, the Truth-in-Billing rules state that "Charges contained on telephone bills must be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered."⁴³ Similarly, in the *Universal Service Order*, the Commission stated that, "[i]f contributors [to universal service] choose to pass through part of their contributions and to specify that fact on customer's bills, contributors must be careful to convey information ... that accurately describes the nature of the charge."⁴⁴

Consistent with these principles, neither uncollectibles nor administrative costs can, in an accurate and non-misleading fashion, be labeled "universal service fees."⁴⁵ As noted in Ad Hoc's reply comments in this proceeding, because they represent no more than general "costs of doing business," administrative costs and uncollectibles are not sufficiently related to a carrier's universal service obligations to be labeled as such. In fact, by permitting carriers to denominate costs associated with bad debt and the administration of their universal service collection efforts as "universal service costs," the Commission is not providing any meaningful limitation on a carrier's ability to mark-up the FCC-mandated contribution factor, and opens the door to carriers increasing this end-user charge in whatever manner they choose. Such limitless markups not only violate Section 201(b) and the Commission's Truth-in-Billing and Universal

⁴² Ad Hoc Reply Comments (filed July 9, 2001) at 22-23.

⁴³ 47 C.F.R. § 64.2401(b).

⁴⁴ 12 FCC Rcd 8776, ¶ 855 (1997).

⁴⁵ Ad Hoc Reply Comments (filed July 9, 2001) at 22-23.

Service principles, they also besmirch the entire universal service program by making the program appear to be considerably more lavish than it actually is.

If the Coalition's per connection approach is implemented, the rationale for forbidding any markups of the Commission's per-connection charge based on "uncollectibles" and "administrative overhead" will be further strengthened.

Regarding uncollectibles, as noted in the Coalition's Comments, a modest increase in the per line charge for monthly service will probably have no impact on telephone subscribership.⁴⁶ Because this per connection charge will not result in more than a handful of customers—if any—discontinuing local service, it cannot be linked to the bad debt associated with customers who can no longer afford local service. As such, carriers cannot truthfully claim that uncollectibles are related to the universal service program, and should not be permitted to include them in their "universal service" line item on customer bills.

Similarly, a per connection contribution methodology should reduce the administrative costs associated with collecting a carrier's universal service contributions, thereby decreasing, if not eliminating entirely, whatever portion of a carrier's administrative costs can truthfully be said to be related to collecting universal service contributions. In particular, ILECs already assess SLCs on a per connection basis and most wireless carriers assess E911 fees and other state and local surcharges on a per connection basis. Given that these entities know their line counts and currently assess end-user fees based on these counts, it is not unreasonable to conclude that it would require minimal additional

⁴⁶ Coalition Comments at 51-52.

resources for these carriers to collect universal service fees on a per connection basis.

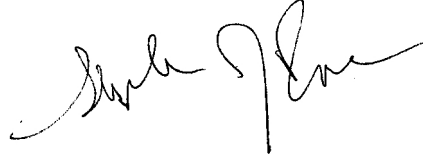
Against this background, even if the Commission chooses to continue to fund the universal service program on the basis of end-user revenues, it cannot, consistent with its Truth-in-Billing and Universal Service principles, allow carriers to mark-up the Commission prescribed contribution factor to recover amounts putatively related to a carrier's "uncollectibles" and "administrative overhead." Because a per connection contribution scheme only decreases whatever costs carriers might incur in collecting universal service contributions, should the Commission adopt such a scheme, the arguments in favor of prohibiting carrier mark-up are even stronger.

V. Conclusion

The Commission should adopt a per-connection assessment and contribution methodology to finance the universal service fund, because the revenue-based scheme is near collapse, and a connection-based scheme is a more sustainable, equitable, and economically efficient means of cost recovery. If the Commission implements a per-connection assessment and contribution regime, however, it cannot legally require multi-line business users to underwrite all future increases in the fund, because in the absence of record evidence indicating that residential customers cannot afford modest increases in their per connection charges, such Commission action would violate the Administrative Procedure Act, the Communications Act, and the Equal Protection Clause.

Finally, regardless of whether it adopts a per-connection assessment and contribution scheme, the Commission should not, consistent with its Truth-in-Billing rules and Universal Service orders, permit carriers to mark-up the FCC-mandated contribution factor.

Respectfully submitted,



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April 22, 2002

Certificate of Service

I, Anthony J. Mangino, hereby certify that true and correct copies of the preceding Comments of the Ad Hoc Telecommunications Users Committee was served this 22nd day of April, 2002 via the FCC's ECFS system, and by first class mail upon the following:

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